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BEACH POLLUTION CASE.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 1 [redacted]ginal. 10

STATE OF NEW JERSEY,

Plaintiff,

vs.

THE CITY OF NEW YORK,

Defendant.

PLAINTIFF'S ANSWER TO DEFENDANT'S MOTION FOR LEAVE TO FILE ANSWER AND TO WITHDRAW ANSWER PREVIOUSLY FILED.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

February 2, 1931.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

INDEX

	PAGE
Notice	1
Plaintiff's Answer to Defendant's Motion for Leave to File Amended Answer and to Withdraw Answer Previously Filed	2

IN THE

Supreme Court of the United States

October Term, 1930.

No. 17, Original.

STATE OF NEW JERSEY,

Plaintiff,

vs.

THE CITY OF NEW YORK,

Defendant.

NOTICE.

TO:

Hon. Arthur J. W. Hilly, Corporation Counsel,
Solicitor for Defendant.

DEAR SIR:

PLEASE TAKE NOTICE that on Monday, February 2, 1931, plaintiff will ask leave to file the annexed answer to defendant's motion for leave to file amended answer and to withdraw its answer previously filed, in the above-entitled matter.

January 29, 1931.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1930.

No. 17, Original.

STATE OF NEW JERSEY,

Plaintiff,

vs.

THE CITY OF NEW YORK,

Defendant.

Plaintiff's Answer to Defendant's Motion for Leave to File Amended Answer and to Withdraw Answer Previously Filed.

Plaintiff answers defendant's motion for leave to file amended answer and to withdraw answer previously filed, and says:

1. It admits paragraphs 1, 2, 3, 4 and 6.

2. It denies paragraph 5, and says that the evidence taken before the Special Master shows that all of the facts pertaining to the subject-matter of this suit have been the subject of conferences and discussions during the past ten years between the Governor, officers of plaintiff's municipalities, the Secretary of War and his agent, the Supervisor of the Harbor of New York, on the one hand, and the Mayor, Corporation Counsel, Health Commissioner, and Commissioner of Street Cleaning and other officers of defendant, on the other hand, and that all of the facts relating to the subject were in the possession of the defendant; that it asked for and obtained from this court an extention of sixty days for filing its answer to the complaint; and that defendant was required by the rules

of equity practice to answer fully, in the first instance, all the allegations of the complaint and to ascertain, and set forth in his answer all of the facts within its own possession necessary to its defense.

3. It denies paragraph 7, except that it admits that hearings began on December 11, 1929, and says that said hearings continued at intervals during fourteen days and were closed on April 8, 1930 (minutes of meeting November 25, 1930, pp. 3, 7, 25; S. M., 2052, 2074, 2058, 2060). On November 25, 1930 counsel for the parties had a meeting with the Special Master to fix the time and place of oral argument and the submission of briefs. Up to that time defendant had failed to furnish certain information requested by the Special Master at the hearing on April 8, 1930, and desired further time in which to furnish that information although all of it had been in its possession since the end of December, 1929. Defendant also desired to file certain supplemental exhibits. For that sole reason the meeting was adjourned to December 5, 1930. It further says that the only proof added to the record since the hearings closed on April 8, 1930, were said exhibits offered by defendant on December 5, 1930, as follows:

Exhibit 9, consisting of three resolutions of the State Department of Health of New Jersey, adopted September 14, 1926; Exhibit 10, a report made in 1928 and which was in possession of defendant at the hearing on April 8, 1930 and available if it desired to offer it in evidence at that time. (S. M., 2039-40; S. M., meeting November 25, 1930, p. 36); Exhibit 11, a bill of complaint filed in the New Jersey Court of Chancery, November 10, 1930, involving a cause of action which arose subsequent to the close of the hearings in this case; Exhibit 12, which contained information of quantities of garbage dumped at sea by defendant during a 5-year period ending Decem-

ber 31, 1929 requested of it by the Special Master at the hearing on April 8, 1930; Exhibit 13, a letter dated June 12, 1930; Exhibit 14, a map, frequently referred to during the hearings, obtained from the office of the New Jersey State Department of Health on April 5, 1930, where it had been on file for a number of years.

Except for Exhibits 11 and 13, all of these documents were available for production in evidence at any of the hearings held by the Special Master. Exhibit 13 has been available to defendant since June 12, 1930, and Exhibit 11 has been available to it as a matter of public record since November 10th, last. At the meeting on November 25, 1930, the Special Master several times remarked that all of these matters could have been brought to the attention of the Special Master sooner (pp. 10, 21, 22, 25, 32, 33, 40, 41, S. M., meeting November 25, 1930). It admits the purpose of the suit as generally stated in paragraph 7. It denies that the evidence offered proves any of the other allegations therein contained. It denies that the granting of this motion will not delay these proceedings and says that the granting of this motion will serve only as an excuse of delay, which is an attitude of the defendant frequently criticized by the Special Master during the hearings and at the meeting on November 25, where the Special Master observed: "It seems to me that there has been an attitude of indefinite postponement in this case" (Minutes of meeting November 25, 1930, p. 5). On January 15, 1931, defendant applied to the Special Master for a postponement of the argument. This application was denied unless plaintiff consented thereto. This motion is an expedient adopted by defendant to prevent the argument of the case on the date fixed by the Special Master and the disposition thereof within a reasonable time thereafter.

4. The public nuisance complained of is the casting upon the waters and upon the beaches of plaintiff, daily, of thousands of tons of garbage and refuse from the City of New York, consisting of vegetable and animal matter in a decayed and putrid condition which interferes with the use of those waters and beaches by thousands of inhabitants and visitors, in twenty-nine seashore municipalities of plaintiff, particularly in the summertime. Said garbage and refuse contains the germs of disease and epidemic and the record shows that it has caused infections, disease and physical injuries. It is important to avoid as much as possible delay in the final determination of this case because the continuance of this public nuisance during the summer season imposes upon plaintiff's municipalities many thousands of dollars of expenses to clean the beaches and it seriously depreciates the value and usefulness of property, aggregating more than one hundred and thirty-nine million dollars in value, which is devoted to enterprises directly relating to the recreational uses of the beach and shore of the Atlantic Ocean for a distance of more than fifty miles along the border of the plaintiff state from Sandy Hook to Beach Haven. The continuance of this nuisance during another summer will involve the loss and expense of many thousands of dollars which plaintiff desires to avoid.

5. It denies paragraph 8.

6. It denies paragraph 9, except that it admits that the case has been set down for argument and for the submission of briefs and findings of fact and conclusions of law before the Special Master on February 4, 1931. It further says that neither at the meeting of November 25 nor at that of December 5, 1930, nor at any other time has defendant indicated any intention or desire to file an amended answer.

7. It denies paragraph 10 and 11.

Respecting the proposed amended answer plaintiff says:

8. The first, second, third and fourth paragraphs thereof are the same as the original answer filed.

9. The proof in the record does not support the allegations of the first eleven lines of the 5th paragraph, and it says that the facts alleged therein, if true, do not constitute legal defense in an action to restrain a public nuisance, since Congress has no power to authorize a public nuisance and the acts of Congress mentioned therein confer no plenary power upon any officer of the government to authorize defendant to dump its garbage at sea. There is no proof in the record that the garbage of defendant is dumped in excess of one marine league from shore; there is no proof that the garbage is not dumped within the navigable waters of the State of New Jersey and of the United States; there is no proof that said garbage and refuse is dumped on the high seas. These contentions are inconsistent with defendant's claim in the same paragraph of right to dump as and where it does by virtue of the permits of the Supervisor of the Harbor of New York, an officer of the War Department. It denies that this court has no authority to enjoin defendant from dumping said garbage and refuse at the location where the record shows that the same is dumped. It further says that the dumping grounds used by the defendant are upon waters and soil over which plaintiff has exclusive territory and jurisdiction; that said garbage is dumped in violation of the statutes of plaintiff.

10. It denies paragraph 6th of the proposed answer and says that the evidence in the record does not support any of the allegations contained therein. Plaintiff further says that said allegations, if true, do not constitute a legal defense to the plaintiff's cause of action, since the

commission of a public nuisance by others would not excuse the defendant.

11. Neither the motion nor the proposed bill of complaint allege any facts not known or capable of being known to the defendant at the time it filed its original answer. No reason is disclosed why said proposed answer could not have been filed in the beginning or at any time since the hearings closed on April 8, 1930.

12. On January 28, 1931, plaintiff was served with defendant's motion and brief in support thereof, said motion to be made before the court on February 2, 1931. Said notice affords insufficient and inadequate time for the proper consideration of the matters contained in said documents, and to prepare and submit an adequate reply thereto.

13. The proposed amended answer does not conform to the proof offered by defendant before the Special Master and the record submitted by defendant before said Special Master does not support any of the allegations contained in the fifth and sixth paragraphs of the proposed answer.

14. The granting of defendant's motion will injure the substantial rights of plaintiff in violation of Equity Rule XIX, in that it will delay for a protracted period the abatement of a public nuisance committed by the defendant, a citizen of the State of New York, in the waters and upon the land of the plaintiff, held by it in its sovereign capacity, which constitutes a menace to the health and welfare of plaintiff's inhabitants and a direct injury to property and rights of the plaintiff and of its municipalities and inhabitants.

15. At the time said motion and brief were served upon plaintiff, plaintiff's brief for argument before the Special

Master had been completed, and printed at great expense to plaintiff, and plaintiff then was and now is ready to submit its brief and oral argument before the Special Master on February 4, 1931.

WHEREFORE plaintiff prays that defendant's motion be denied.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.